

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270

463 KING STREET, SUITE B
CHARLESTON, SC 29403-7204

Facsimile 843-414-7039

January 2, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Dominion Energy South Carolina, Incorporated's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) - S.C. Code Ann. Section 58-41-20(A)

South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Carolinas, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A)

South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Progress, LLC's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A)

Docket Nos. 2019-184-E, 2019-185-E, and 2019-186-E

Dear Commissioner Ervin,

The South Carolina Coastal Conservation League (“CCL”) and Southern Alliance for Clean Energy (“SACE”) appreciate the opportunity to submit comments on this matter. It is our understanding that ex parte communications were made to staff for the Conservation Voters of South Carolina on Dec. 13, 2019 regarding the pending avoided cost proceedings in Docket Nos. 2019-184-E, 185-E, and 186-E.

It is further our understanding that the ex parte communications have been reported pursuant to S.C. Code Ann. § 58-3-260 and the Public Utilities Review Committee has requested an investigation.

CCL and SACE note the relevant provisions in the Code of Judicial Conduct regarding judicial recusal. *See* S.C. Code Ann. § 58-3-30 (applying the Code of Judicial Conduct to Public Service Commissioners). Canon 3(B)(9) prohibits a judge in any pending proceeding from making any public comment “that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.” Under Canon 3(E)(1), a judge (or a Commissioner) must disqualify himself in a proceeding in which his impartiality might reasonably be questioned, even if his actions do not constitute any specific violations of the rule.

Regardless of the content of the ex parte communications in the present instance or whether they were inadvertent, an abundance of caution suggests recusal from the cases pending reconsideration or rehearing as the most prudent course. While the communications do not appear intended to bias the proceedings, the communications outside the record and ongoing investigation could be perceived to raise a reasonable question about the fairness and impartiality of any decisions on reconsideration or rehearing.

Thank you again for the opportunity to weigh in on this matter.

Sincerely,

/s/ J. Blanding Holman, IV
J. Blanding Holman, IV
Southern Environmental Law Center
463 King St., Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
bholman@selcsc.org

/s/ Lauren J. Bowen
Lauren J. Bowen
Admitted Pro Hac Vice
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
lbowen@selcnc.org
*Attorneys for South Carolina
Coastal Conservation League and
Southern Alliance for Clean Energy*